IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 651 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VASANTRAI J MALI

Versus

KANTILAL ZAVERBHAI PATEL

Appearance:

1. Special Civil Application No. 651 of 1990

MR ARUN H MEHTA for Petitioner No. 1

MR SH SANJANWALA for Respondents No. 1-2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 03/11/2001

ORAL JUDGEMENT

The petitioner above named has preferred this petition before this Court under Article 227 of the

Constitution of India for appropriate writ, order or direction for quashing and setting aside the judgment and order passed by the learned Gujarat Revenue Tribunal dated 29.9.1989 in Revision Application No.71/1985. The facts of the case leading to this writ petition may be briefly stated as under :-

1. The petitioner above named had filed tenancy case No.8855/1983 before the learned Mamlatdar and A.L.T. (Agriculture Land Tribunal) at Pardi for an order permitting the petitioner to purchase 37 gunthas of land of survey No.96 B/1 situated at village Motha Vaghchipa in Pardi taluka. The learned Mamlatdar recorded the evidence produced before him, and thereafter, he came to a decision that the petitioner was entitled to be held to be a deemed purchaser in respect of 7 gunthas of the said survey number. It was also directed that the petitioner shall purchase the said piece of land from the said survey number on payment of Rs.1070/- by two annual installments. This would mean that the tenancy case of the petitioner was partly allowed. In fact, he claimed the land admeasuring at 37 gunthas. However, the learned Mamlatdar granted him land of an area of 7 gunthas only rejecting the claim of the petitioner for the land admeasuring at 30 gunthas.

2. Feeling aggrieved by the said judgment and order dated 24.2.1984 of the learned Mamlatdar, A.L.T. placed at annexure-A, at page 8 to the petition, the first respondent herein preferred tenancy appeal being tenancy appeal No.436/84. Simultaneously, the petitioner also filed tenancy revision being tenancy revision No.1454/84 before the learned Deputy Collector (land reforms) at Valsad. The learned Deputy Collector heard the parties and found that the appeal as well as revision application both were without any merits, and, therefore, the learned Deputy Collector dismissed the said appeal as well as revision by judgment and order dated 22.4.1985. The judgment has been place at anenxure-B at page 13 to the petition.

3. Feeling aggrieved by the said judgment and order of the learned Deputy Collector the first respondent preferred revision application being No.TEN-B-5-71/85. The learned Tribunal heard the parties and allowed the said revision application of the first respondent setting aside the orders of the learned Deputy Collector as well as of the learned Mamlatdar referred to herein above. The learned Gujarat Revenue Tribunal found that the dwelling house occupied by the present petitioner was not built at the expense of the petitioner nor it was built

at the expense of his predecessor-in-title and, therefore, the petitioner was not entitled to be treated to be a deemed purchaser, in view of the provisions made in Section 17-B of the Bombay Tenancy and Agricultural Land Act, 1948 (hereinafter referred to as "the Act"). Therefore the order passed by the learned Mamlatdar and confirmed by the learned Deputy Collector treating the appellant to be entitled to purchase 7 gunthas of land in question has been quashed and set-aside by the learned Gujarat Revenue Tribunal.

4. Feeling aggrieved by the said judgment and order of the Gujarat Revenue Tribunal dated 22.9.1989, the petitioner has preferred this writ petition under Article 227 of the Constitution of India before this Court. It has been mainly contended here that the judgment and order recorded by the learned Tribunal are illegal and erroneous; that the learned Tribunal has acted in excess of its jurisdiction under Section 76 of the Bombay Revenue Tribunal Act; that the learned Tribunal has erred in holding that the petitioner was not entitled to any land; that the learned Tribunal has not correctly appreciated and interpreted the provisions made in Section 17-B of the said Act and, therefore, the judgment and order of the learned Tribunal are illegal and erroneous and deserve to be set-aside. The petitioner has therefore prayed that the present writ petition be allowed and the aforesaid judgment and order of the learned Gujarat Revenue Tribunal in Revision Application No.71/85 be quashed and set-aside. The said judgment of the learned Tribunal has been placed at Annexure-C at page 24 to the petition. On receipt of the petition, rule was issued and Mr.Sanjanwala has appeared on behalf of the respondents. During the course of the pendency of the petition, original respondent No.(1) Kantilal Zaverbhai Patel has passed away and his legal representatives have been substituted in his place by order in C.A. No.10037/2001.

5. I have heard Mr.Arun H. Mehta, learned advocate appearing for the petitioner, who has taken me through the records and proceedings of this writ petition. During the course of hearing it has been noticed that so far the claim of the petitioner is concerned, it is very clear that the claim of the petitioner related to the land admeasuring at 37 gunthas. It would be seen that the learned Mamlatdar and A.L.T. did not grant the said prayer in full. At the same time the learned Mamlatdar directed that the petitioner be permitted to purchase 7 gunthas of land from the land in question in accordance with the price mentioned in his order dated 24.02.84. In

other words the claim of the petitioner with respect to 30 gunthas of land was outright rejected. The appeal and the revision filed before the learned Deputy Collector have also failed. It is to be seen here that so far as 30 gunthas of land is concerned the present petitioner did not challenge the order of the learned Deputy Collector in tenancy revision No.1454/84. Therefore, that order against him has already become final. So far the learned Revenue Tribunal is concerned, the said Tribunal had a very limited scope with respect to the 7 gunthas of land only. The learned Mamlatdar as well as the learned Deputy Collector both have recorded a finding that the petitioner was entitled to be deemed purchaser and, therefore, he was entitled to purchase the said 7 gunthas of land from the land in question. The case of the petitioner was mainly based on a consideration that he was occupying dwelling house in the said 7 gunthas of land and, therefore, he was entitled to purchase the said land admeasuring as 7 gunthas. The learned Tribunal decided the matter other way. The learned Tribunal has observed that for the purpose of getting the said 7 gunthas of land, the petitioner was required to plead and prove that the dwelling house occupied by him was constructed at his cost or at the cost of his predecessor-in-title. The learned Tribunal found that by and large it was admitted before the Tribunal that the dwelling house occupied by the present petitioner was neither built at his expense or it was built at the expense of the predecessor-in-title of the petitioner; that therefore, the petitioner was not entitled to purchase the same in view of the provisions made in Section 17-B of the said Act. Now it is very clear that the petitioner would be entitled to be deemed purchaser in respect of 7 gunthas of land provided he proves that the dwelling house occupied by him was built at his expense or at the expense of his predecessor-in-title. The revenue Tribunal has recorded a finding of fact that the dwelling house was not built at the expense of the petitioner or at the expense of his predecessor-in-tile. In view of that position, it is amply clear that the dwelling occupied by the petitioner is not proved to have been built at the expense of the petitioner or at the expense of his predecessor-in-title and in that event the petitioner cannot claim to be deemed predecessor in respect of the said land.

6. I am of the opinion that the above finding recorded by the learned Tribunal cannot be assailed. The learned Tribunal was perfectly justified in holding that the petitioner was not entitled to purchase the said land since the dwelling house occupied by him was not built at

the expense of the petitioner or at the expense of his predecessor-in-title. In this connection, the provision made in Section 17-B of the said Act is very clear. It does not require any support of any case law. However, it would be worthwhile to refer to a decision of this Court in case of Thakorlal Ambalal Patel v. Nagarbhai Parshottam & Ors. reported in 1985 (1) G.L.R. 350. There, this Court was required to interpret the provision made in Section 17-B of the said Act. On interpretation of the said provision, this Court has found that when a person claims to be a deemed purchaser, it would be obligatory on his part to prove that the dwelling house occupied by him was built at his expense or at the expense of his predecessor-in-title. In other words, if the said fact has not been established, then in that event the person concerned cannot be treated to be a deemed purchaser and, therefore, he cannot claim right over the said property. Section 17-B (1) of the said Act may be reproduced for ready referene :-

> "17-B(1) On and with effect from such date as the State Government may, by notification in the Official Gazette, specify, every tenant referred to in Section 16 shall be deemed to have purchased from his landlord the site on which the dwelling house occupied by such tenant was built, and the land immediately appurtenant thereto and necessary for enjoyment of the dwelling house free from all encumbrances, at the price to be fixed by the Tribunal, being a price not exceeding twenty times the annual rent for the site".

6.1. The above provision and the decision also shows that that every tenant referred to in Section 16 shall be deemed to have purchased from his landlord the site on which dwelling house occupied by such tenant was built, and the land immediately appurtenant thereto and necessary for enjoyment of the dwelling house free from all encumbrances. It has also been observed in the said decision that this Section 17-B pre-supposes that a tenant must be in actual possession and that the said dwelling house ought to have been constructed at the expense of such tenant or his predecessor-in-title on a site belonging to his landlord. In this case, there is nothing on record to show that dwelling house occupied by the petitioner was built or constructed at his expense or at the expense of his predecessor-in-title. In that view of the matter, it is very clear that in view of the above situation, the learned Tribunal was perfectly justified in holding that the petitioner was not entitled to

purchase from his landlord, the site on which the dwelling house occupied by him or the land immediately appurtenant thereto and necessary for enjoyment of the dwelling house, free from all encumbrances, at the price to be fixed by the Tribunal. Therefore, it is very clear that the petitioner is and was not entitled to purchase the said land and, therefore, the judgment and order of the learned Tribunal cannot be treated to be illegal or erroneous. In above view of the matter and for the reasons stated above, there seems to be no merit in the present petition and, consequently, the petition is required to be dismissed, as it is without any merit.

For the foregoing reasons, this petition is ordered to be dismissed. Rule is discharged. There shall be no order as to costs.

(D.P. Buch, J.)

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